

FROM :

FAX NO. : 7188529293

Nov. 08 2010 10:32AM P2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

- v. -

\$14,665 IN UNITED STATES CURRENCY,

Defendant in Rem.

STIPULATION AND ORDER
OF SETTLEMENT AND
DISCONTINUANCE

10 Civ.

1:10-cv-03254-DNY

DOCUMENT

ELECTRONICALLY FILED

DOC #:

DATE FILED: 11/9/2010

WHEREAS, on April 16, 2010, the United States of America brought this action pursuant to Title 21 United States Code, Section 881(a)(6) by the filing of a Verified Complaint seeking the forfeiture of \$14,665 in United States currency (the "Defendant Currency");

WHEREAS, the Defendant Currency was seized from Jason Rodriguez ("Rodriguez" or the "Claimant") by the New York City Police Department ("NYPD") on or about August 22, 2009 in the area of Park Avenue and East 106th Street, New York, New York;

WHEREAS, the seizure of the Defendant Currency was adopted for forfeiture by the U.S. Drug Enforcement Administration ("DEA") and the Defendant Currency was transferred to the United States Marshals Service Seized Assets Deposit Account, where continues to be held on deposit;

WHEREAS, on or about April 21, 2010, a copy of the Verified Complaint and notice of the Government's intent to forfeit the Defendant Currency was sent to Rodriguez and to his attorney, Ian A. Niles, Esq., the only person or entity known to have asserted an interest in the Defendant Currency;

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WHEREAS, the notice letter sent with the Verified Complaint advised of Rodriguez's possible interest in this action, and of the right to file a claim and answer and contest the forfeiture;

WHEREAS, on May 28, 2010, Rodriguez filed a timely claim asserting sole, lawful ownership of the Defendant Currency;

WHEREAS, on June 15, 2010, Rodriguez filed an answer to the Verified Complaint;

WHEREAS, Rodriguez, through counsel, has submitted financial records to the Government in support of his representation that the Defendant Currency was not derived from criminal activity;

WHEREAS, beginning on April 30, 2010 and for thirty consecutive days thereafter, pursuant to Rule G(4)(a)(iv)(C) of the Supplemental Rules for Certain Admiralty and Maritime Claims and Asset Forfeiture Actions, the Government posted notice of the Verified Complaint against the Defendant Currency on www.forfeiture.gov, the official government internet site. Proof of such publication was filed with the Clerk of the Court on June 16, 2010;

WHEREAS, no party other than Rodriguez has claimed an interest in the Defendant Currency or has appeared to contest the action to date, and the statutory time periods for doing so, as set forth in Rule G(5)(a)(ii) of the Supplemental Rules for Certain Admiralty and Maritime Claims and Asset Forfeiture Actions, have expired;

WHEREAS, for the purposes of settling this matter without further litigation, the Office of the United States Attorney for the Southern District of New York (the "Office") and the Claimant agree that the Defendant Funds should be released to the Claimant on the terms and conditions set forth below.

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THEREFORE, IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

1. The Defendant Currency shall be returned to the Claimant by payment of the sum of \$14,665 to the Claimant in care of his attorney, Ian A. Niles, Esq., in accordance with the information Claimant's attorney shall provide to the United States Attorney's Office on Form USM-3881 (ACH Vendor/Miscellaneous Payment Enrollment Form) (Rev. 03/10).
2. The Claimant is hereby barred from asserting any claim against the United States or any of its agents and employees (including, without limitation, the Drug Enforcement Administration, the United States Marshals Service and the United States Attorney's Office for the Southern District of New York), or against the New York City Police Department or any of its agents and employees, in connection with or arising out of the seizure, restraint, and/or constructive possession of the Defendant Currency, including, without limitation, any claim that there was not probable cause to seize and/or forfeit the Defendant Currency, that the Claimant is a prevailing party or that the Claimant is entitled to attorney's fees, costs or interest.
3. The Claimant further agrees to hold harmless the United States and its agents and employees (including, without limitation, the Drug Enforcement Administration, the United States Marshals Service and the United States Attorney's Office for the Southern District of New York), and the New York City Police Department and its agents and employees, from any and all claims, including, without limitation, third-party claims, in connection with or arising out of the seizure, restraint, and/or constructive possession of the Defendant Currency, including any claim of ownership by a third party.
4. The Office's agreement to this Stipulation is expressly premised upon the truthfulness, accuracy, and completeness in every material part of the records provided and representations about such records made by the Claimant through his counsel to the Office. If,

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upon motion by the Office, the Court finds that any records or representations failed to disclose material information or directly misrepresented material facts, the Office may request that this Stipulation be set aside and the that the Government be given a reasonable time thereafter to commence a judicial forfeiture action with respect to the Defendant Currency. Claimant agrees and acknowledges that, in such case, the Office may bring any actions that the Government could have timely brought as of the date of the Claimant's execution of this Stipulation.

5. The parties hereby waive all rights to appeal or to otherwise challenge or contest the validity of this Stipulation.

6. This Stipulation of Settlement shall in no way be deemed an admission of culpability, liability, or guilt on behalf of the Claimant, the United States or the New York City Police Department, or any of their respective agents, officers or employees, past and present. Further, this Stipulation of Settlement shall in no way constitute any reflection upon the merits of the claim and defenses asserted respectively by the Government or the Claimant.

7. The undersigned United States signatory represents that she is signing this Stipulation and Order in her official capacity and that she is authorized to execute this Stipulation and Order.

8. This Stipulation and Order may be executed in counterparts, each of which will be deemed an original, and all of which, when taken together, will be deemed the complete Agreement.

9. The Court will have exclusive jurisdiction over the interpretation and enforcement of this Stipulation and Order.

10. This Stipulation and Order constitutes the complete agreement between the Parties and may not be amended except by written consent of the Parties.

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11. Upon the Court's endorsement and the filing of this Stipulation and Order, this action shall be discontinued without costs or fees to any party.

AGREED AND CONSENTED TO:


FOR THE OFFICE OF THE UNITED
STATES ATTORNEY FOR THE
SOUTHERN DISTRICT OF NEW YORK:

PREET BHARARA
United States Attorney

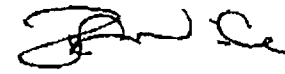
By: 
BARBARA A. WARD
Assistant United States Attorney
One St. Andrew's Plaza
New York, NY 10007
Tel. (212) 637-1048
Barbara.Ward@usdoj.gov

Dated: November 8, 2010

JASON RODRIGUEZ, CLAIMANT:

X 
JASON RODRIGUEZ
Dated: November , 2010

FOR JASON RODRIGUEZ, CLAIMANT
LAW OFFICES OF IAN A. NILES, P.C.:


By: 
IAN A. NILES, ESQ.
145 Hudson St., Suite 5C
New York, NY 10013
Tel. (212) 307-0023
ianilesesq@aol.com

Dated: November , 2010

Having reviewed the foregoing Stipulation and Order of Settlement and Discontinuance, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:
The Stipulation is So Ordered.

New York, New York
November 9, 2010


HONORABLE WILLIAM H. PAULEY
UNITED STATES DISTRICT JUDGE